

STATE OF NEVADA

DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF MORTGAGE LENDING

REGULATIONS CONCERNING AMENDMENTS TO  
CHAPTER 645A OF THE NEVADA ADMINISTRATIVE CODE

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

Authority: NRS 645A.050

**Sec. 1.** Chapter 645A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 through 7, inclusive of this regulation.

**Sec. 2.** NAC 645A is hereby amended by adding a new section thereto to read as follows:

*In the absence of written escrow instructions or an agreement providing otherwise, money deposited in escrow shall be held in trust for the person on whose behalf the deposit is made and must be returned to such person upon his request.*

**Sec. 3.** NAC 645A is hereby amended by adding a new section thereto to read as follows:

*1. Escrow agencies shall deposit all funds held in trust in accounts clearly identified as "trust" or "escrow" accounts, referred to herein as "trust accounts," and shall take all steps necessary to inform the depository institution of the purpose and identity of the accounts. Escrow Agency trust accounts shall be maintained only in financial institutions approved by the Commissioner of mortgage lending.*

*2. Every escrow agency shall maintain and preserve for a period of at least five years, after final disposition of the underlying matter, the records of the matter, including checkbooks, canceled checks, check stubs, vouchers, ledgers, journals, closing statements, accountings or other statements of disbursements rendered to*

*clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or other property of a client, and make such records available to the Division for inspection upon request.*

*3. A financial institution shall be approved as a depository for escrow agency trust accounts if it is authorized to conduct business in this state under the laws and regulations of the Division, if it files with the Division an agreement, in a form approved by the Division and agrees to report to the Commissioner whenever any properly payable instrument is presented against an escrow agency trust account containing insufficient funds, irrespective of whether or not the instrument is honored. No trust account shall be maintained in any financial institution that does not agree to so report. Any such agreement shall apply to all branches of the financial institutions and shall not be canceled except upon thirty days notice in writing to the mortgage lending division.*

*4. The agreement shall provide that all reports made by the financial institution shall be in the following format:*

*(a) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;*

*(b) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the escrow agency, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.*

*5. Reports under paragraph 4 shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds.*

*6. Every escrow agency shall, as a condition of maintaining its escrow agency license, be conclusively deemed to have consented to the reporting and production requirements mandated under this provision.*

*(a) Compliance with this provision and consent shall be acknowledged as part of every escrow agency's annual renewal form. The licensee shall immediately file with the mortgage lending division an updated agreement form and consent upon:*

*(1) opening of any trust account with a financial institution; or*

*(2) the utilization of any trust account for which there is no agreement form and consent on file with the mortgage lending division for said escrow agency.*

*7. Nothing herein shall preclude a financial institution from charging a particular escrow agency for the reasonable costs of producing the reports and records required by this Rule.*

*8. A financial institution shall not be liable for damages to any person or entity for any erroneous overdraft report filed in good faith or for the unintentional failure to comply with this Rule.*

*9. For purposes of this Rule:*

*(a) "Financial institution" includes any federally insured bank, savings and loan association, credit union, savings bank, and any other federally insured institution located in this state that accepts for deposit funds held in trust by escrow agencies.*

*(b) "properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this state.*

*10. All escrow agencies shall comply with the provisions of this chapter within 60 days of the effective date of this rule or of becoming a licensed escrow agency.*

*Licensed escrow agencies who fail to meet the requirements of this provision shall be notified of their non-compliance, in writing, by the mortgage lending division. Upon the expiration of forty-five days from the date the mortgage lending division sends the escrow agency notice of non-compliance, the mortgage lending division shall commence disciplinary proceedings against such escrow agency pursuant to NRS 645A.090.*

**Sec. 4. NAC 645A is hereby amended by adding a new section thereto to read as follows:**

*Annual financial statement; audit of trust accounts.*

*1. Except as otherwise provided in this section, not later than 120 days after the last day of each fiscal year for an escrow agency, the escrow agency shall submit to the Commissioner a financial statement that:*

*(a) Is dated not earlier than the last day of the fiscal year; and*

*(b) Has been prepared from the books and records of the escrow agency by an independent public accountant who holds a permit to engage in the practice of public accounting in this state that has not been revoked or suspended.*

*2. The Commissioner may grant a reasonable extension for the submission of a financial statement pursuant to this section if an escrow agency requests such an extension before the date on which the financial statement is due.*

*3. If an escrow agency maintains any accounts described in NRS 645A.160, the financial statement submitted pursuant to this section must be audited. The public accountant who prepares the report of an audit shall submit a copy of the report to the Commissioner at the same time that he submits the report to the escrow agency.*

**Sec. 5. NAC 645A is hereby amended by adding a new section thereto to read as follows:**

*Business ethics and practices; trust accounts.*

*1. Every escrow agency and escrow agent shall openly, fairly and honestly conduct the escrow agency business and shall at all times conform to the accepted business ethics and practices of the escrow agency business.*

*2. If an escrow agency maintains any accounts described in NRS 645A.160, the trust account must at all times contain sufficient money to pay all money due or owing to all customers, and no disbursement may be made from the account except as directed by either escrow instructions or servicing agreements, except that a licensee may, if authorized by agreement between the parties to the transaction, periodically withdraw from the account such money as may accrue to the licensee from services performed.*

*3. Every licensee maintaining a separate custodial or trust account shall keep a record of all money deposited in the account, which must indicate clearly the date and from whom the money was received, the date deposited, the dates of withdrawals and*

*other pertinent information concerning the transaction including but not limited to escrow instruction and servicing agreements, and must show clearly for whose account the money is deposited and to whom the money belongs. If the escrow agency performs services as a third party in the collection of payments in connection with a loan secured by real property, the escrow agency must remit to the client respectively entitled thereto within 30 days following the end of the month in which payment is received, or as otherwise directed by agreement between the parties. The records and money are subject to inspection by the Commissioner or his authorized representative. The records must be maintained at the premises in this state at which the licensee is authorized to conduct business.*

*4. If the Commissioner finds that a licensee's records are not maintained pursuant to subsections 2 and 3, he may, in addition to the statement required pursuant to section 3, require the licensee to deliver an audited financial statement prepared from his records by a certified public accountant who holds a certificate to engage in the practice of public accounting in this state. The statement must be submitted within 60 days after the Commissioner requests it. The Commissioner may grant a reasonable extension for the submission of the financial statement if an extension is requested before the statement is due.*

**Sec. 6. NAC 645A is hereby amended by adding a new section thereto to read as follows:**

*“Construction control” defined. A “construction control” is any person that engages in the control or disbursement of any funds payable or paid to laborers, materialmen, material suppliers, contractors, subcontractors, architects, engineers or others, for the purpose of satisfying bills incurred in construction, repair, alteration or improvement of any premises or that engages in the processing or approval of any mechanic's lien release, voucher or authorization for payment of a labor bill, or material bill where such bill is incurred in the construction, repair, alteration or improvement of any premises.*

*Duties of escrow agency conducting construction control. Every escrow agency performing construction control services, as applicable, shall:*

*1. Obtain a true copy, certified as true by a registered architect or licensed professional engineer and signed by the person or persons who executed the general contract of construction or the owner-contractor contracts, respectively, as owner, of the complete plans and specifications to be used in the construction subject to the construction control.*

*2. Obtain from the lender a written statement of the total net amount of money, credits or loan proceeds that will be available for disbursement or, as a lender engaging in construction control functions, review and ascertain its total net amount.*

*3. Obtain a true copy, signed by all the parties thereto, of the general contract of construction or all owner-contractor contracts, pursuant to which the construction will be performed.*

*4. Obtain a true copy, signed by the parties thereto, of all of the subcontracts entered into with a contractor if the construction is to be performed pursuant to a general contract of construction.*

*5. Compare the total amounts to be paid pursuant to all of the subcontracts with the total amount payable to the general contractor, and compare the amount payable with the total net loans proceeds available for disbursement as construction loan funds.*

*6. Compare the total amounts to be paid pursuant to all owner-contractor contracts entered into with the total net loan proceeds available for disbursement as construction loan funds.*

*7. Establish, in writing, the categories of disbursement and the amounts of money apportioned to each category for disbursement.*

*8. Disburse or authorize the disbursement of money from a particular category only for bills incurred within that category.*

*9. Disburse or authorize the disbursement of funds if the total net loan proceeds exceeds in amount or equals the total payable by the terms of:*

*(a) The general contract of construction, or the subcontracts entered into with the general contractor, whichever is greater; or*

*(b) The total payable by the terms of all owner-contractor contracts.*

*10. Receive funds before authorizing disbursement, if other funds are needed to create an excess of funds as required pursuant to subsection 9.*

*11. Restore categories of disbursement in the order in which they become exhausted and to the amount exhausted from any available funds in its hands and from other funds supplied by the borrower or borrowers.*

*12. Obtain from the obligee a mechanic's lien release covering all work, labor and materials performed or supplied to the time specified in the lien release and for the amount payable pursuant to the terms of the release, before the disbursement of any money for payment of such bills.*

*13. Upon receipt of written notice of a change order entered into after the beginning of construction which requires expenditure of extra money and the amount thereof, require that any category of disbursement affected thereby be increased and restored to the extent of the amount of such extras from any available funds in its hands and from other funds supplied by the borrower before the disbursement of additional funds from that category.*

*14. Before disbursing money to a subcontractor or supplier, obtain from that subcontractor or supplier a true copy of the bill, in those instances in which the category was established based upon a proposal or bid of that subcontractor or supplier and not upon a firm contract.*

Sec. 7. NAC 645A is hereby amended to read as follows:

**645A.010** Fee for supervision and related activities: Amount; collection; failure to pay..... 3

**645A.010 Fee for supervision and related activities: Amount; collection; failure to pay.**

1. The [~~commissioner of financial institutions~~] **Commissioner** will charge and collect a fee of [~~\$50~~] **\$60** per hour from each escrow agency for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 645A of NRS.

2. The Commissioner will bill each escrow agency upon the completion of the activity for the fee established in subsection 1. The fee must be paid within 30 days after the date the bill is received. Except as otherwise provided in this subsection, any payment received after that date must include a penalty of 10 percent of the fee plus an additional 1 percent of the fee for each month, or portion of a month, that the fee is not paid. The Commissioner may waive the penalty for good cause.

3. The failure of an escrow agency to pay the fee required in subsection 1 as provided in this section constitutes grounds for revocation of its license.
- 4. Upon written request by the licensee the Division will provide an accounting of time billed for the examination.*